SIXTH DIVISION
DECEMBER 30, 2011

No. 1-10-1934

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 22460
	)	
RAFAEL FIGUEROA,	)	Honorable
	)	William Timothy O'Brien,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROBERT E. GORDON delivered the judgment of the court. Justices Garcia and Lampkin concurred in the judgment.

O R D E R

¶ 1 ***Held*:** (1) The testimony of two police officers, which contradicted the testimony of defense witnesses, was sufficient to show defendant was guilty beyond a reasonable doubt of aggravated battery to a police officer; (2) defendant's $200 DNA ID analysis fee must be vacated because he provided a DNA sample and was assessed the fee in an earlier case; (3) the mittimus must be amended to reflect one conviction of aggravated battery when the trial court used a single jury instruction and a general verdict form for aggravated battery.

¶ 2 Following a jury trial, defendant Rafael Figueroa, was convicted of two counts of aggravated battery to a police officer and one count of resisting or obstructing a police officer. Defendant filed a posttrial motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. The trial court granted the motion for judgment notwithstanding the verdict as to the count of resisting or obstructing a police officer, but denied defendant's motion on the remaining two counts of aggravated battery to a police officer. After a hearing on aggravation and mitigation, the trial court sentenced defendant to two concurrent five-year terms in the Illinois Department of Corrections, with two years mandatory supervised release and imposed $640 in costs and fees, which included a $200 State DNA ID fee. On appeal, defendant claims that: (1) the State failed to prove him guilty of aggravated battery to a police officer beyond a reasonable doubt; (2) the trial court erred in imposing a $200 State DNA ID fee; and (3) the mittimus should be amended to reflect only one conviction for aggravated battery. We affirm defendant's conviction, but vacate his $200 State DNA ID fee and order the mittimus be amended to reflect only one conviction of aggravated battery.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by information with two counts of aggravated battery to a police officer and one count of resisting or obstructing a police officer. One of the aggravated battery counts alleges that defendant "struck" Chicago police officer Adam Wallace about the body while knowing that he was a police officer engaged in his authorized duties. The other aggravated battery count alleges that defendant "spat on" Officer Wallace while knowing that he was a police officer engaged in his authorized duties. Officer Wallace and his partner, Chicago

police officer Rich Yi, testified for the State.

¶ 5 A. Officer Wallace's testimony

¶ 6 Officer Wallace testified that at 2 a.m., on November 27, 2009, he was on duty, in uniform, and riding in the passenger seat of a marked police vehicle along with his partner, Officer Yi, who was also in uniform and driving. He testified that they received a radio dispatch of a battery in progress near the intersection of Dickens and North Narragansett Avenues. While on route, they received an updated radio dispatch alerting them that "a man with a gun" was at the scene.

¶ 7 Officer Wallace testified that when they approached the intersection of Dickens and North Naragansett, he observed two to three males standing outside of a two-story, single family home located on the 2100 block of North Naragansett. He testified that as they drove toward the home, the males noticed the police vehicle and then fled inside the home. Officer Wallace testified that he and Officer Yi exited their vehicle and were approached by another male, who pointed at the home and said, "He's in there. He's in there."

¶ 8 Officer Wallace testified that he and Officer Yi approached the front door of the home, announced their office and entered through the front door. He testified that the front door of the home was open. He testified that they then entered the home's living room, where he observed "some individuals" arguing. He testified that a man entered the home through the front door and ran up the stairs to the second floor. Wallace testified that he and Officer Yi pursued the man to the second floor and detained him. Officer Wallace testified that he and Officer Yi conducted a protective "pat down search," but did not recover any weapons. He testified that they briefly

interviewed the man and that after the interview was concluded, he heard more arguing on the first floor. He testified that he and Officer Yi returned downstairs to the living room area.

¶ 9 Officer Wallace testified that when they entered the living room, he observed seven to eight "individuals." He testified that he observed the man who had pointed to the house earlier when they arrived at the scene, arguing with defendant. He testified that defendant had "redness on his face, [a] torn T-shirt, a bloody nose, [and a] bloody mouth." He testified that he asked defendant whether he required medical assistance and defendant responded, yelling, "F*** all you bitches. You ain't s***." He testified that defendant then spit in his face and on his vest from a short distance, striking him on the left side of his chin and the left side of his chest. He testified that defendant then fled the living room into an adjacent bedroom. Officer Wallace testified that, as he and Officer Yi pursued, the defendant became combative and formed a fist with his right hand, "swung around," and hit him on the left side of his head.

¶ 10 Officer Wallace testified that he did not require any medical attention for the strike to his head. He testified that when he later returned to District 25 police headquarters, an evidence technician took a photograph of the left side of his head. The photograph was offered and received into evidence without objection.

¶ 11 Officer Wallace testified that after defendant struck him, he and Officer Yi then used an emergency "take down" procedure on defendant and handcuffed him. Officer Wallace testified that defendant was unresponsive to his verbal commands and his body became limp. Officer Wallace testified that at that point in time, two other police officers, arrived at the home and assisted him and Officer Yi in carrying defendant by his arms and legs out of the home into a

police vehicle.

¶ 12 Officer Wallace testified that after defendant had been placed in the vehicle, "more people," including children, arrived outside the home and "the environment became completely hostile." Officer Wallace testified that the people began cursing the officers, and they decided to leave the scene and drove defendant to West Suburban Hospital for treatment of his injuries. Officer Wallace testified that during the drive to the hospital, he noticed defendant had a "strong odor of alcohol from his person." He testified that after defendant was treated for his injuries, he placed him under arrest.

¶ 13 Officer Yi testified substantially to the same facts as Officer Wallace. The State then rested. The trial court denied defendant's motion for a direct verdict. The defense then presented four witness on defendant's behalf: (1) defendant's sister, Carmen; (2) defendant's 15-year-old daughter, J.; (3) defendant's fiancee, Alina; and (4) Carmen's neighbor and friend, Lisette.

¶ 14 B. Carmen's Testimony

¶ 15 Carmen testified that she lived at the home located at 2101 North Narragansett with her five children. She testified that on November 26, 2009, she had a "family gathering" to celebrate the Thanksgiving holiday. She testified that the gathering began at 3 p.m. and between 10 to 15 people attended, which included defendant and some children. She testified that she observed defendant in the home throughout the day and evening.

¶ 16 Carmen testified that "in the early morning hours" of November 27, 2009, the front door to her home was closed, but unlocked. She testified that some of her guests were about to leave her home when two unannounced police officers entered through the front door. Carmen testified

that she asked the officers the reason they had entered her home, but the officers did not respond. She testified that the officers followed one of her guests as he walked up the stairs to the second floor.

¶ 17 Carmen testified that she followed the officers and asked them again what they were doing in her home. The officers told her that they were "looking for an F-ing gun." Carmen testified that, while the officers were on the second floor, she observed them "destroying" her daughter's bedroom. Carmen testified that the officers then exited her daughter's bedroom and returned downstairs.

¶ 18 Carmen testified that the two officers entered the living room where defendant was standing. She testified that defendant asked the officers why they were inside the home. Carmen testified that the officers told defendant to "shut your F-ing mouth up." She testified that defendant then asked the officers "where they were when my sister's house was getting shot up," which she understood to be a reference to gunshots that had been fired at her home "a few weeks prior." She testified that after defendant asked the officers that question, the officers became "very aggressive," and that they "were pretty much mad and determined."

¶ 19 Carmen testified that defendant again asked the police officers to leave the home and "that's when [the officers] went crazy." She testified that the two officers "went after" defendant. She testified that she and her nephew stood in the doorway between the officers and defendant, but that the officers "ran passed" them. She testified that other officers then entered her home. She testified that her guests attempted to take photographs of the officers with their cell phones and that the officers attempted to take the cell phones from them.

¶ 20 Carmen testified that the two officers dragged defendant into an adjacent bedroom and closed the door. She testified that about one minute later, she observed the officers exit the bedroom, dragging defendant "by his cuffs and jeans" and that he had blood on his face, on his nose and had a "couple scratches." She further testified that defendant appeared unconscious and that his shirt had been removed and that his pants were "below his knees." She testified that she did not observe defendant spit at the officers and that, before entering the bedroom with the officers, defendant did not have any visible injuries and his clothing was "normal."

¶ 21 On cross-examination, Carmen testified that no alcohol had been consumed at the family gathering. She testified that she did not take any photographs of her daughter's room after the police officers had left and that she did not contact the authorities concerning the police officers actions.

¶ 22 C. J's Testimony

¶ 23 J., age 15, testified that she is the daughter of the defendant and the oldest of her four siblings. She testified that on November 26, 2009, defendant drove her, her four siblings and their mother from their home in Sterling, Illinois, to her aunt Jeanne's home. J. testified that she was unsure of the home's location. She testified that they had Thanksgiving dinner at her aunt Jeanne's home and remained there until about 2:15 a.m. the following morning.

¶ 24 She testified that after they left aunt Jeanne's home, defendant drove them to her aunt Carmen's home. She testified that there was no party when her family arrived, but that "other people" were in Carmen's home. She testified that she did not observe defendant consume any alcohol at any time that day.

¶ 25 J. testified that, between 2:30 and 3:30 a.m., she was preparing to go to bed in a bedroom located on the first floor, when two police officers "barged in" through the front door, which was closed. She testified that the officers went upstairs and "went through stuff," and then returned downstairs, asking, "Where's the gun at?" She testified that before the officers arrived, she had not observed the defendant in any physical altercation. She testified that she observed that defendant did not have blood on him prior to the police officers arrival, nor were his clothes disheveled.

¶ 26 J. testified that when defendant asked the officers to produce a search warrant, the officers "charged" at defendant. She testified that she did not observe defendant spit or swing a fist at the officers. She testified that when people in the house tried to take pictures with their cell phones, one of the officers said, "what do you think that's going to do, help?" She testified that "more" officers arrived at the scene. She testified that the two officers took defendant into a bedroom and locked the door. She testified that she heard a "couple of yelps" from the bedroom. She testified that, approximately thirty seconds later, the two officers dragged defendant out of the bedroom. She testified that defendant was handcuffed, bloody, and his clothes were torn.

¶ 27 D. Alina's Testimony

¶ 28 Alina testified that she was the fiancee of defendant and lived with him and their five children in Sterling. She testified that on November 27, 2009, they arrived at Carmen's house after 2 a.m. that morning. She testified that she was entering the rear door of Carmen's home into the kitchen at the same time "police [officers were] barging through the front door." She testified that she was unable to observe the front door from the kitchen, but testified that she

knew the police came into the home by "the way they just barged right through the door."

¶ 29 Alina testified that she then heard Carmen ask, "[w]hy are you coming in my house?" Alina entered the dining room and observed two police officers in the adjacent living room. She testified that the two officers were asking for a "weapon or drugs, or whatever." She testified that the officers exited the living room and went upstairs where they were "searching through stuff." She testified that she heard the police officers yelling, "[w]here's the gun, where's the gun."

¶ 30 Alina testified that the officers returned to the living room and defendant asked the officers to produce a search warrant. She testified that the officers then dragged defendant into an adjacent bedroom and locked the door. She testified that she did not observe defendant spit on or swing a fist at the officers. She also testified that she did not observe defendant with any injuries or torn clothes at that point in time. She testified that after they entered the bedroom, she called 911.

¶ 31 Alina testified that she heard screaming from the bedroom. She said that, after approximately 30 seconds, the officers opened the bedroom door and exited. She testified that defendant's hands were handcuffed behind him and that the officers were "dragging [defendant] by handcuffs" out of the bedroom. She testified that she tried to approach defendant, but the officers told her "to stay the F back." Alina testified that defendant did not have a shirt on and his pants "were down to his ankles." She testified that the officers dragged defendant to the front of the house and threw him on the ground. She testified that defendant appeared to be unconscious. She testified that she attempted to approach defendant, but the officers stopped her and called her a "bitch" and told her "to suck their private part."

¶ 32 She testified that she went to the "Office of Professional Standards" to file a complaint, but ultimately did not do so because defendant was "fighting a case right now, and [did not] want to answer any questions right now with them."

¶ 33 F. Lisette's Testimony

¶ 34 Lisette testified through an Spanish interpreter. She testified that she is a friend and neighbor of Carmen's and that between 2 and 3 a.m. on November 27, 2009, she was a guest at Carmen's home. She testified that she was standing in a hallway next to the living room when two police officers entered. She testified that the officers said that they were looking for a gun. She observed the officers walk upstairs and then returned downstairs to the living room.

¶ 35 She testified that when the officers returned downstairs, defendant asked the officers where they were when his sister's window was shot out. She testified that defendant at that point in time had no visible injuries, and his clothing was not ripped. She testified that she did not observe defendant strike a police officer.

¶ 36 She testified that defendant then walked into an adjacent bedroom. She testified that the two police officers followed him into the bedroom and closed the bedroom door. She testified that the police exited the bedroom, dragging defendant out without a shirt and with his pants at his knees.

¶ 37 Following Lisette's testimony, the defense rested.

¶ 38 G. Rebuttal Testimony

¶ 39 On rebuttal, the State called Officer Wallace who testified that he never "rummaged or trashed" any of the bedrooms in the house, and never used any physical force against the person

that he patted down on the second floor of the home.

¶ 40 H. Closing Arguments, Jury Instructions, and Verdict

¶ 41 At the jury instruction conference, the State requested, without objection from defense counsel, that the trial court provide the jury with a single, general, instruction on the offense of aggravated battery.

¶ 42 During closing arguments, the State argued to the jury that defendant committed two separate acts of aggravated battery, namely by spitting on Officer Wallace and by striking him. Following closing arguments, the trial judge provided the jury with a single instruction on aggravated battery and a single instruction on resisting or obstructing a police officer, and provided a set of verdict forms for each of the two instructions.

¶ 43 During jury deliberations, the jury sent a written question to the court, asking if the mere act of verbal swearing constituted a battery. Pursuant to an agreement of the parties, the court answered that the mere act of verbal swearing did not constitute a battery. The jury then returned a verdict against defendant finding him guilty of aggravated battery and resisting or obstructing a police officer.

¶ 44 Defendant filed a posttrial motion for judgment notwithstanding the verdict or, in the alternative, a new trial. In his motion, defendant pointed to the statutory elements required to establish the offense of resisting or obstructing a police officer, which include proof of an injury to the police officer. 720 ILCS 5/31(1)(a)(7) (West 2008). However, defendant argued, there was no evidence presented to the jury that showed any such injury. At a hearing on defendant's motion, the trial court found no testimony to support an injury to Officer Wallace and entered

judgment notwithstanding the verdict on that count. The trial court further found as follows:

> "As to the remaining counts of aggravated battery to a [police] officer, both of those counts the Court finds that there was sufficient evidence presented during the course of the trial for the jury to find Defendant guilty beyond a reasonable doubt as to both those counts. So as to the motion for new trial as to both counts, that will be denied."

¶ 45 At sentencing, the trial court heard arguments on aggravation and mitigation. The State argued in aggravation that defendant's criminal history included a conviction from July 21, 2009, for aggravated battery to his eight-year old son, for which defendant received 120 days imprisonment and 30 months probation, and a felony conviction for an unlawful use of a weapon in August 13, 2003. In pronouncing its sentence, the trial court stated as follows:

> "[T]his offense *** occurred while you were on probation. Considering all those factors as well as the case, I'm going to sentence you to five years [in the] Illinois Department of Corrections."

The trial court also imposed $640 in costs and fees, which include a $200 fee for the State DNA ID System pursuant to section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3 (West 2008)).

¶ 46 The mittimus reflects that defendant was sentenced to two concurrent five-year terms in the Illinois Department of Corrections, with a two-year mandatory supervised release for the two counts of aggravated battery to a police officer.

¶ 47 This timely appeal follows.

¶ 48 ANALYSIS

¶ 49 On appeal, defendant claims that: (1) the State failed to prove him guilty of aggravated battery to a police officer beyond a reasonable doubt; (2) the trial court erred in imposing a $200 State DNA ID fee; and (3) the mittimus should be amended to reflect only one conviction for aggravated battery.

¶ 50 A. Sufficiency Of The Evidence

¶ 51 First, defendant claims that the State did not prove him guilty beyond a reasonable doubt of aggravated battery to a police officer because the testimony of Officers Wallace and Yi contradicted defendant's witnesses and both officers had motive to falsely accuse defendant after they entered his sister's home and battered him.

¶ 52 When reviewing the sufficiency of the evidence in a criminal case, it is necessary to determine " 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Magee*, 374 Ill. App. 3d 1024, 1031 (2007), quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). It is not the function of a reviewing court to retry the defendant or substitute its judgment for that of the trier of fact. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, the trier of fact assesses the credibility of the witnesses, determines the appropriate weight of the testimony, and resolves conflicts or inconsistencies in the evidence. *Evans*, 209 Ill. 2d at 211. A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *Evans*, 209 Ill. 2d at 209.

¶ 53 A person commits a battery if he intentionally or knowingly (1) causes bodily harm to an individual; or (2) makes physical contact of an insulting or provoking nature with an individual. 720 ILCS 5/12-3(a) (West 2008). A person commits aggravated battery if, in committing a battery, he knows "the individual harmed to be an officer *** of local government *** engaged in the performance of his or her authorized duties as such officer." 720 ILCS 5/12-4(b)(18) (West 2008). Thus, to sustain a conviction for aggravated battery, the State was required to prove the following elements: (1) defendant intentionally or knowingly caused bodily harm or made physical contact of an insulting or provoking nature with an individual; (2) defendant knew the individual harmed to be an officer of local government; and (3) such officer was engaged in the performance of his or her authorized duties. 720 ILCS 5/12-4(b)(18) (West 2008).

¶ 54 After viewing the evidence in a light most favorable to the prosecution, the State presented sufficient evidence upon which the jury could conclude that defendant committed the offense of aggravated battery. Officer Wallace testified that he and Officer Yi were in uniform and responding to a radio dispatch of a battery and a "man with a gun" call. The officers arrived at Carmen's home in their marked police vehicle and observed two or three males run inside as they arrived. Upon exiting their vehicle, they observed another male pointing at the house telling them "He's in there. He's in there."

¶ 55 Officer Wallace testified that he and Officer Yi announced their office and walked into the home through the front door. While in the home, Officer Wallace testified that he observed between seven and ten people arguing, which included the defendant. He observed that defendant "had redness on his face, a torn T-shirt, a bloody nose and a bloody mouth" and

appeared to have been in a physical altercation. Officer Wallace testified that he approached defendant to determine if he needed medical assistance and then defendant yelled at him and Officer Yi saying "F*** all you bitches. You ain't s***." He testified that defendant then spat on him from a distance of one- to two-feet way and that defendant's spittle struck him on his left cheek and on the left side of his vest. Officer Wallace testified that defendant then fled down a hallway. Officer Wallace testified he pursued defendant, who stopped, turned around and struck him with a fist on the left side of his head. Officer Yi corroborated Officer Wallace's testimony.

¶ 56 Here, the testimony of the two officers established the necessary elements that defendant committed aggravated battery when he spat on and then punched Officer Wallace who was responding to a battery and "man with a gun" call. The Illinois Supreme Court has held that the testimony of even a single witness, if positive and credible, is sufficient to convict even if it is contradicted by the defendant. *People v. Siguenza–Brito*, 235 Ill. 2d 213, 228 (2009). Although the testimony of defendant's sister, daughter, fiancee and a family friend presented the jury with a different version of the incident, it was for the trier of fact to determine which version of the incident to believe. *People v. Moss*, 205 Ill. 2d 139, 164 (2001).

¶ 57 We also do not find persuasive defendant's argument that the two officers' testimony is not credible because it "was fraught with motive to falsely accuse [defendant] after he challenged their uninvited entry into his sister's home." Here, both parties presented conflicting versions of the actions that the two police officers took when they entered Carmen's home, as well as their actions while in the home. Again, it was the jury's duty to resolve those inconsistencies in the testimony, which it did, against defendant. This court will not disturb the jury's findings

regarding credibility because a rational trier of fact could have found that Officers Wallace and Yi presented credible testimony, while defendant's witnesses did not.

¶ 58 In sum, the record shows that the testimony of the two police officers was sufficient evidence for the jury to find defendant guilty of aggravated battery beyond a reasonable doubt.

¶ 59 B. State DNA ID Fee

¶ 60 Next, defendant claims that the trial court erred in imposing a $200 State DNA ID fee pursuant to section 5-4-3 of the Unified Code of Corrections (730 ILCS 5/5-4-3 (West 2008)) because defendant has already submitted a DNA sample pursuant to a prior conviction and has paid a corresponding analysis fee. The State agrees.

¶ 61 Recently, in *People v. Marshall*, 242 Ill. 2d 285 (2011), the Illinois Supreme Court held that section 5-4-3 of the Unified Code of Corrections (730 ILCS 5/5-4-3 (West 2008)) only gives the trial court the authority to order a defendant to submit a DNA sample and pay the DNA analysis fee once, when the defendant is not currently in the DNA database. *Marshall*, 242 Ill. 2d at 296-97. Further, this court has found that in order to vacate the DNA analysis fee under *Marshall*, a defendant must show only that he was convicted of a felony after the DNA requirement went into effect on January 1, 1998. *People v. Leach*, 2011 IL App (1st) 090339, ¶ 38. Here, the record shows that defendant was convicted of a felony on August 13, 2003. There is no information in the record or in the parties' briefs whether the trial court required defendant to submit a DNA sample and assess the DNA fee at that time, so we presume that it did. *Leach*, 2011 IL App (1st) 090339, ¶ 38 (presuming that the trial court, as part of defendant's felony conviction sentence, imposed the mandatory requirement that defendant submit a DNA

sample and be assessed the DNA analysis fee after the fee was in effect). Therefore, the $200 DNA analysis fee must be vacated. *Marshall*, 242 Ill. 2d at 297.

¶ 62 C. Mittimus

¶ 63 Third, defendant claims that the mittimus, which reflects two convictions for aggravated battery, must be corrected to reflect only one conviction of aggravated battery.

¶ 64 Defendant argues that the trial judge instructed the jury on only one count of aggravated battery and the jury returned only one count of aggravated battery, and the trial judge's oral pronouncement at sentencing refers to only one sentence. Specifically, in pronouncing its sentence, the trial judge stated:

> "[T]his offense *** occurred while you were on probation. Considering all those factors as well as the case, I'm going to sentence you to five years [in the] Illinois Department of Corrections."

¶ 65 The State argues that the mittimus should remain unchanged because a review of the record shows that the State consistently advanced a theory of multiple counts based on defendant's multiple acts, and the trial judge's oral pronouncement also shows that the trial court intended to sentence defendant on two counts of aggravated battery. In rejecting defendant's posttrial motion and prior to sentencing defendant, the trial judge stated that:

> "[a]s to the remaining *counts* of aggravated battery *** *both* of those counts the Court finds there was sufficient evidence *** for the jury to find the Defendant guilty beyond a reasonable doubt as to *both* of those counts. So as to the motion for a new trial as to *both counts*, that will be denied." (Emphasis added.)

¶ 66 A judge's oral pronouncement is the judgment of the court. *People v. Lewis*, 379 Ill. App. 3d 829, 837 (2008). The written order of commitment is merely evidence of the judgment of the court. *Lewis*, 379 Ill. App. 3d at 837. When the oral pronouncement of the court and the written order are in conflict, the oral pronouncement of the court controls. *Lewis*, 379 Ill. App. 3d at 837.

¶ 67 In the case at bar, defendant was charged with two counts of aggravated battery, namely by spitting on Officer Wallace and by striking him. Officer Wallace's testimony showed that these were two separate acts. He testified that after defendant spit on him and fled down a hallway. He then testified that defendant became combative and turned and struck him.

¶ 68 However, during the jury instruction conference, the State tendered only one jury instruction to the trial court on aggravated battery. The trial court then instructed the jury on aggravated battery in general and provided the jury with a general verdict form for aggravated battery. The jury returned a general verdict of guilty of aggravated battery and, in sentencing defendant, the trial court specified one offense.

¶ 69 Based on our review of the record, we cannot say that the jury unanimously concluded that defendant was guilty of both counts of aggravated battery or just one. All the general verdict shows is that the jury unanimously agreed that the offense of aggravated battery was proven beyond a reasonable doubt. Accordingly, we order the mittimus be amended to reflect one count of aggravated battery.

¶ 70 III. CONCLUSION

¶ 71 We affirm the judgment of the circuit court of Cook County that defendant was proven guilty beyond a reasonable doubt. Pursuant to *People v. Marshall*, 242 Ill. 2d 285 (2011), the

defendant's $200 DNA ID fee is vacated. We order defendant's mittimus be amended to reflect one count of aggravated battery.

¶ 72 Affirmed in part and vacated in part; mittimus amended.